

Claim 23. The device of Claim 22, wherein said front end of the first branch is stitched to the left shoulder strap and the front end of the second branch is stitched to the left shoulder strap and to the right shoulder strap.

### **REMARKS**

This is a response to the Office Action of December 19, 2000. Claims 1-21 are pending in the application. In response to the election requirement set forth by the Examiner, the applicant elects, with traverse the embodiment shown in Figures 1, 3-5. Claims 1-4 read on the elected species. The applicant canceled claims 5-21 reserving the right to file divisional application(s) on the non-elected claims.

The applicant added Claims 22 and 23 to better define the present invention and point out the unique features of the present invention. No new matter was introduced.

Claims 1 and 4 were rejected under 35 U.S.C. 102(b) as being anticipated by Dennington in Fig. 6. The applicant amended Claim 1 to particularly recite the unique feature of the present invention, wherein a portion of the shoulder strap, the portion that extends of a user's shoulder, is made resilient and stretchable. This feature is now shown, described or suggested in Dennington.

Additionally, the applicant respectfully submits that Dennington does not disclose, in Fig. 6, provision of a resilient suspender assembly that is fixedly attached to the shoulder straps. As shown in Fig. 6 and described in Col. 7, lines 36 - 67 and col. 8, lines 1 - 6, Dennington employs an anterior D-ring 62 positioned and attached to the shoulder straps 36 and 38. A second pair of upper D-rings 104 is provided on the shoulder straps 36, 38 in a position above and posterior from the D-ring 62. Before the user puts on a harness, each anterior end 82 of the cord 68 is detached from the D-ring

62. The anterior end 82 is then threaded through the corresponding upper D-ring 104, and is reattached to the corresponding anterior D-ring 62.

Therefore, Dennington discloses a device, where the elastomeric suspender assembly is not fixedly, non-detachably attached to the shoulder straps. Each time a user puts on a harness, the suspender assembly is threaded through the D-rings again. Such arrangement creates an undesirable weak link in the harness assembly. The present invention obviates this disadvantage by stitching the suspender assembly to the shoulder straps, below the elastomeric portions of the shoulder straps. Such feature is not shown, taught or described by Dennington. The added Claims 22 and 23 further emphasize this feature.

It is well established that to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. See, *Glaxo Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047, 34 USPQ2d 1565, 1567 (Fed. Cir. 1995). Anticipation is an issue of fact, see *In re Graves*, 69 F.3d 1147, 1141, 36 USPQ2d 1697, 1700 (Fed. Cir. 1995); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988). Rejections under 35 USC 102 are proper only when claimed subject matter is identically disclosed or described in prior art, in other words, all material elements recited in the claim must be found in one unit of prior art to constitute anticipation. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920-21 (Fed. Cir. 1989) ("Anticipation" requires that the identical invention is described in a single prior art reference).

In this case, the feature of a fixed, non-detachable attachment of the suspender assembly to the shoulder straps is not disclosed in Dennington, Fig. 6, contrary to Examiner's suggestion. Further, the added language of Claim 1, relating to the provision of a resilient, stretchable portion on the shoulder straps brings Claims 1 and 4 even farther away from Dennington. In view of the above, it is believed that Claims 1 and 4, which depends on Claim 1, overcome the rejection under 35 USC 102(b).

Claim 3 was rejected under 35 USC 103(a) as being unpatentable over Dennington. The applicant respectfully traverses this rejection and submits that Dennington teaches away from the concept of permanently attaching the suspender assembly to the shoulder straps, as discussed above. Obviousness is a legal question based on underlying factual determinations. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566, 1 USPQ2d 1593, 1596 (Fed. Cir. 1987). Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. *W. L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). This is an illogical and inappropriate process. *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 38 USPQ2d 1551 (Fed. Cir. 1996). The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

In equating the function of sewing to the concept of permanent, not detachable connection between the suspender and the harness, the Examiner erred and impermissibly used hindsight to arrive at the claimed invention. See *W.L. Gore & Assocs., Inc. v.*

*Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.").

In view of the above, it is believed that Claim 3 overcomes the rejection under 35 USC 103(a).

Claim 2 was rejected under 35 USC 103(a) as being unpatentable over Dennington in view of Cox. The applicant amended Claims 1 and 2, which depends on Claim 1, to better define the present invention to point out a unique feature of the device, wherein only a portion of the shoulder strap that lies over the shoulder apex is made elastomeric.

As admitted by the Examiner, Dennington does not disclose provision of resilient stretchable shoulder straps. Cox discloses shoulder straps made in their entirety of a composite material - a section of an elastic material is sewn into a strap fabricated from conventional, non-elastic material, such nylon and/or polyester. See, col. 4, lines 61 - 67, Claims 1, 10. In contrast, the present invention discloses a three-section shoulder strap- anterior portion from the waist up is made of non-stretchable material, the second portion that extends over the shoulders is made stretchable and resilient, and a third posterior portion is non-stretchable. Such arrangement is not shown, suggested or described in any of the prior art references cited by the Examiner.

Besides, there is no suggestion in the prior art that the teachings of the primary and secondary references should be combined in a manner recited in the instant

application. It is well established that there must be some logical reason apparent from the evidence of record that would justify a combination or modification of references. *In re Regel*, 188 USPQ 132 (CCPA 1975). The question is whether the prior art taken as a whole would suggest the claimed invention to one of ordinary skill in the art. Therefore, even if all elements of a claim are disclosed in various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill in the art would have been prompted to combine the teachings of the cited references to arrive at the claimed invention. See, also *In re Hershler*, 591 F.2d 693, 200 USPQ 711 (CCPA 1979). If the only suggestion came from the applicant's own specification - prima facie case of obviousness cannot be established. *In re Jansson*, 609 F.2d 996, 203 USPQ 976 (CCPA 1979).


Since Dennington apparently does not teach provision of stretchable shoulder straps and Cox suggests using a composite material, Claim 2 is believed allowable.

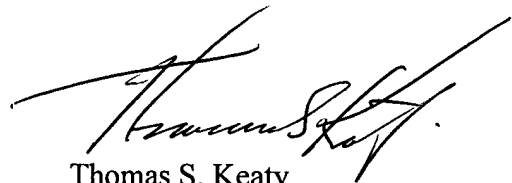
In view of the amendments and arguments presented above, it is believed that Claims 1-4 and 22-23 are in condition for allowance and issuance of an early Notice of Allowance is respectfully requested.

Respectfully submitted,

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